

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

INSITUFORM TECHNOLOGIES, INC.,

Plaintiff,

v.

AMERICAN HOME ASSURANCE
COMPANY,

Defendant.

CASE NO. 04-10487 GAO

ANSWER OF AMERICAN HOME ASSURANCE COMPANY

Pursuant to Fed. R. Civ. P. 8, Defendant American Home Assurance Company ("American Home") responds to the numbered paragraphs of the Complaint filed by Plaintiff Insituform Technologies, Inc. ("Insituform" or "Plaintiff") as follows:

Introduction

1. Paragraph 1 is an introductory paragraph containing a summary of the nature of the allegations and relief sought against American Home and therefore no response is required. To that extent that this paragraph may be construed to contain allegations against American Home which require a response, they are denied.

The Parties, Jurisdiction and Venue

2. American Home is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2.

3. Admitted.

4. Inasmuch as the allegations contained in Paragraph 4 state a conclusion of law, no response is required of American Home. To the extent that Paragraph 4 may be construed to contain factual allegations against American Home which require a response, they are denied.

5. American Home is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5.

6. Inasmuch as the allegations contained in Paragraph 6 state a conclusion of law, no response is required of American Home. To the extent that Paragraph 6 may be construed to contain factual allegations against American Home which require a response, they are denied.

7. Inasmuch as the allegations contained in Paragraph 7 state a conclusion of law, no response is required of American Home. To the extent that Paragraph 7 may be construed to contain factual allegations against American Home which require a response, they are denied.

Insituform's Insurance

8. American Home is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8.

9. American Home is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9.

10. American Home is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10.

11. American Home admits that it issued an umbrella liability insurance policy, Policy Number BE 3206923, to Insituform for the period July 1, 2003 to July 1, 2004 (the "American Home policy"). Responding further, American Home states that the American Home policy is a document whose terms and conditions speak for themselves, and to the extent that the allegations of Paragraph 11 are inconsistent with, or mischaracterize, those terms and conditions, they are denied.

12. American Home admits that a Liberty Mutual general liability policy is listed on the Schedule of Underlying Insurance in the American Home policy.

13. Denied.

14. Denied. Responding further, American Home states that Endorsement No. 4 entitled "Contractor's Endorsement" in the American Home policy provides, in its entirety, as follows:

CONTRACTOR'S ENDORSEMENT

Excluded Hazards

This insurance does not apply to:

1. **Property Damage** to any property or equipment leased by the **Insured**;
2. **Property Damage** to property being installed, erected or worked upon by the Insured or by any agents or subcontractors of the **Insured**;
3. **Bodily Injury** or **Property Damage** arising out of any project insured under a "wrap-up" or any similar rating plan; or
4. **Bodily Injury** or **Property Damage** arising out of any professional services performed by or on behalf of the Insured, including but not limited to the preparation or approval of maps, plans, opinions, reports, surveys, designs or specifications, and any supervisory, inspection or engineering services.

Following Form Hazards

It is further agreed that this insurance does not apply to:

1. **Property Damage** arising out of:
 - a. Blasting or explosion other than the explosion of air or steam vessels, piping under pressure, prime movers, machinery or power transmitting equipment;
 - b. The collapse of or structural injury to any building or structure due to:
 - 1) the grading of land, paving, excavating, drilling, burrowing, filling, back-filling, tunneling, pile driving, coffer-dam or caisson work,

2) the moving, shoring, underpinning, raising, or demolition of any building or structure, or the removal or rebuilding of any structural support thereof; or

c. Damage to or destruction of wires, conduits, pipes, mains, sewers, tanks, tunnels, any similar property, and any apparatus in connection therewith, beneath the surface of the ground or water, caused by and occurring during the use of mechanical equipment for the purpose of grading land, paving, excavating, drilling, burrowing, filling, back-filling or pile driving; or

2. Any liability assumed by the **Insured** under any contract or agreement.

However, if insurance for such **Bodily Injury** or **Property Damage** is provided by a policy listed in the Schedule of Underlying Insurance:

1. This exclusion shall not apply; and

2. The insurance provided by our policy will not be broader than the insurance coverage provided by the policy listed in the Schedule of Underlying Insurance.

All other terms and conditions of this policy remain unchanged.

15. Denied.

The MWRA Claim

16. American Home is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16.

17. American Home is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17.

18. American Home is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18.

19. American Home is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19.

20. American Home is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20.

American Home's Denial of The MWRA Claim

21. American Home admits that Insituform provided its first notice of loss with respect to the MWRA Claim to American Home on or about December 29, 2003. American Home also admits that by letter dated February 13, 2004, American Home informed Insituform that there is no coverage under the American Home policy in connection with the MWRA Claim. Responding further, American Home states that the February 13, 2004 letter is a document whose terms and conditions speak for themselves, and to the extent that the allegations of Paragraph 21 are inconsistent with, or mischaracterize, those terms and conditions, they are denied.

22. American Home states that the February 13, 2004 letter is a document whose terms and conditions speak for themselves, and to the extent that the allegations of Paragraph 22 are inconsistent with, or mischaracterize, those terms and conditions, they are denied.

23. American Home admits that Insituform demanded that American Home withdraw its declination of coverage for the MWRA Claim. American Home denies the remaining allegations contained in Paragraph 23.

24. American Home admits that it has informed Insituform that there is no coverage under the American Home policy in connection with the MWRA Claim, and that the American Home policy does not follow form to the Liberty Mutual policy under the Contractor's Endorsement with respect to the MWRA Claim. American Home denies the remaining allegations contained in Paragraph 24.

COUNT I
(Breach of Contract)

25. American Home repeats and incorporates by reference its responses to Paragraphs 1-24, as if fully set forth herein.

26. Admitted.

27. American Home is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27.

28. American Home is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 28.

29. Denied.

30. American Home admits that it has informed Insituform that there is no coverage under the American Home policy in connection with the MWRA Claim.

31. Denied.

32. Denied.

33. Denied.

COUNT II
(For Declaratory Judgment)

34. American Home repeats and incorporates by reference its responses to Paragraphs 1-24, as if fully set forth herein.

35. American Home admits that there exists an actual controversy between American Home and Insituform concerning the interpretation of the terms and conditions of the American Home policy in connection with the MWRA Claim. American Home denies the remaining allegations contained in Paragraph 35.

36. Denied.

COUNT III
(Violation Of Mo. Rev. Stat. § 375.420 (2002))

37. American Home repeats and incorporates by reference its responses to Paragraphs 1-24, as if fully set forth herein.

38. Inasmuch as the allegations contained in Paragraph 38 state a conclusion of law, no response is required of American Home. To the extent that Paragraph 38 may be construed to contain factual allegations against American Home which require a response, they are denied.

39. Denied.

AFFIRMATIVE DEFENSES

First Defense

The Complaint, and each count thereof, fails to state a claim upon which relief can be granted.

Second Defense

Plaintiff's Complaint is barred by the terms, conditions, provisions and exclusions contained in the American Home policy.

Third Defense

Plaintiff's claims against American Home are barred to the extent that the MWRA Claim does not constitute an "accident" or "occurrence," as those terms are defined and/or used in the American Home policy.

Fourth Defense

Plaintiff's claims against American Home are barred to the extent that the MWRA Claim does not constitute "property damage," as that term is defined in the American Home policy.

Fifth Defense

Plaintiff's claims against American Home are barred to the extent that property damage did not occur during the effective period of the American Home policy.

Sixth Defense

Plaintiff's claims against American Home are barred to the extent that Plaintiff failed to comply with all the terms and conditions under the American Home, including but not limited to the obligation to provide timely notice to American Home of an occurrence or claim under the policy.

Seventh Defense

Plaintiff's claims against American Home are barred to the extent that Plaintiff failed to mitigate any damages it may have suffered.

Eighth Defense

Unless and until coverage under all of the underlying policies is properly exhausted, there is no coverage under the American Home policy.

Ninth Defense

Plaintiff's claims against American Home are barred by the "Your Product" exclusion contained in the American Home policy, which bars coverage for property damage to "Your Product" arising out of it or any part of it.

Tenth Defense

Plaintiff's claims against American Home are barred by the "Your Work" exclusion contained in the American Home policy, which bars coverage for property damage to "Your Work" arising out of it or any part of it and included in the Products-Completed Operations Hazard.

Eleventh Defense

Plaintiff's claims against American Home are barred by the "Excluded Hazards" in the Contractor's Endorsement of the American Home policy, including but not limited to the


exclusion which bars coverage for property damage to property being installed, erected or worked upon by the insured or by any agents or subcontractors of the insured.

WHEREFORE, American Home requests that this Court:

1. Dismiss the Complaint against American Home with prejudice;
2. Enter judgment in favor of American Home with respect to each count and claim asserted by Plaintiff;
3. Award American Home its costs, including attorneys' fees, incurred in connection with this action; and
4. Grant such other and further relief the Court deems just and proper.

AMERICAN HOME ASSURANCE COMPANY,

By its Attorneys,

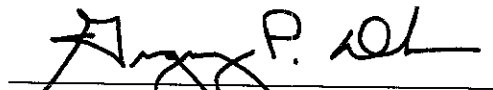


Gregory P. Deschenes (BBO #550830)
NIXON PEABODY LLP
100 Summer Street
Boston, Massachusetts 02110
(617) 345-1000
(617) 345-1300 (facsimile)

Dated: April 20, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by mail on April 20, 2004.



Gregory P. Deschenes



NIXON PEABODY LLP

ATTORNEYS AT LAW

100 Summer Street
Boston, Massachusetts 02110-2131

(617) 345-1000

Fax: (617) 345-1300

Gregory P. Deschenes

Direct Dial: (617) 345-1324

E-Mail: gdeschenes@nixonpeabody.com

April 20, 2004

VIA HAND DELIVERY

Clerk's Office
United States District Court for the
District of Massachusetts
One Courthouse Way
Boston, MA 02210

Re: Insituform Technologies, Inc. v. American Home Assurance Company
Case No. 04-10487 GAO

Dear Sir or Madam:

Enclosed for filing in the above-entitled action please find an Answer of American Home Assurance Company.

Thank you for your attention to this matter.

Very truly yours,

Gregory P. Deschenes

GPD:lhb
Enclosure

cc: Stanley A. Martin, Esq.
Charles L. Philbrick, Esq.